

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**HENRY JOSEPH BORELLI,**

**Petitioner,**

**v.**

**Civil Action No. 2:06cv87**

**AL HAYNES, Warden,**

**Respondent.**

**ORDER**

It will be recalled that on September 7, 2006, Magistrate Judge Seibert filed his Report and Recommendation, wherein the Petitioner was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Petitioner filed his objections on September 25, 2006.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner in his Petition, filed pursuant to 28 U.S.C. §2241, wherein Petitioner alleges that his indictment was defective, were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation. Specifically, Magistrate Judge Seibert notes that the primary means of collaterally attacking a federal conviction and sentence is through a motion pursuant to 28 U.S.C. §2255. Further, Magistrate Judge Seibert finds that because Petitioner has not demonstrated that §2255 is an inadequate or ineffective remedy, he has improperly filed a §2241 petition. Upon review of the Petitioner's objections, the Court finds that the Petitioner has not raised any issues that were not already thoroughly considered and addressed by the Magistrate Judge in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and

Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

**ORDERED** that Magistrate Judge Seibert's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Petitioner's Petition for Writ for Habeas Corpus shall be, and the same hereby is, **DENIED**. This Civil Action is hereby **DISMISSED WITH PREJUDICE**.

In light of this ruling, the Court further finds that all pending motions are hereby moot.

Accordingly, it is further

**ORDERED** that all pending motions in the matter shall be, and the same hereby are, **DENIED** as moot. It is further

**ORDERED** that the above-styled action shall be **STRICKEN** from the docket of this Court. It is further

**ORDERED** that the Clerk shall enter judgment for the Respondent. It is further

**ORDERED** that, if Petitioner should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

**ENTER:** May 4<sup>th</sup>, 2007

/s/ Robert E. Maxwell  
United States District Judge